

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1052 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SHRI RAM SUKHDEV

Versus

STATE GOVERNMENT

Appearance:

MR SAURIN A SHAH for Petitioner

Mr. Y.F.Mehta, PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 17/01/97

ORAL JUDGEMENT

The accused appellant was facing charge under sections 302, 325 of Indian Penal Code before the learned Additional City Sessions Judge, 10th Court, Ahmedabad by way of Sessions Case No. 243 of 1988. At the end of the trial, the said learned Judge held the

accused guilty for both the offences and accordingly, after convicting him for 302 and 325 offences respectively, rigorous imprisonment for life and rigorous imprisonment for four years was awarded. Both the substantive sentences were ordered to run concurrently.

2. The incident happened on 17.3.1988 at about 8.00 a.m. The deceased Maikuram Tilakram was given a stick blow by the accused appellant which having landed on the head of the accused, had resulted into fatality and when the mother of the deceased Ishwaridevi tried to intervene, she also received injury at the hand of the accused causing fracture on left forearm.

3. The genesis of the incident as could be gathered from the deposition of the complainant p.w. 3 exh. 15 page 111, Vinaben Maikuram was that early in the morning at about 8.00 a.m., the deceased approached the accused with a proposition that the accused should pay arrears of rent or else he should vacate the premises. It seems that the accused had never paid rent. The aforesaid proposition was met with by a stout denial by the accused and he said that he will neither vacate the premises nor will he pay the rent. This led to verbal quarrel between the two. It seems that the deceased also pleaded with the accused that there is an increase in the number of family members of the deceased and the deceased should vacate the premises. At his insistence for vacating the premises, the accused went in the house and came out with a stick and gave a blow on the head of the deceased. The second blow landed on the fingers of the deceased and at that time, Ishwaridevi intervened.

4. When the incident has happened in this manner and the blow on the head is the only one and that too, with a stick, the submission made before us now is that the death of the deceased was never intended by the accused. For this purpose, the aforesaid circumstance of the deceased initiating early in the morning a verbal quarrel, the accused insisting upon not vacating the premises and finally, resorting to violation with the help of the stick and giving only one blow on the head followed by the circumstances as brought out in the cross-examination of the witnesses that there was a civil dispute going on between the parties with regard to this very property where claim of the accused was that he has a share in the property and therefore, it could not be an intention of the accused to cause death of the deceased.

5. It was therefore, submitted that it should be a case of section 304(2) of the Indian Penal

Code.

6. For this purpose, our attention was also drawn to the medical evidence in the form of post mortem notes exh. 8 where only linear fracture was found on the head corresponding to the location of injury which was in the form of hametoma. Therefore, no fracture could be detected and in fact, it was detected by Casualty Medical Officer. No doubt, the fracture had resulted into extra deural and subdeural haemorrhage.

7. The death is no doubt due to said injury.

The question therefore, is whether the accused can be held guilty under section 302 or 304 (2) IPC, as urged by the learned advocate Mr. S.A.Shah for the accused-appellant. So far as the offence under section 325 is concerned, on account of passage of time, the entire period of sentence awarded therein has already undergone. Eversince from the date of arrest, that is, from the date of the incident, the accused has remained behind bars. By now, almost eight years and 10 months have passed.

8. In the aforesaid background, when civil dispute was pending and it was the deceased who claiming himself to be landlord started quarrel early in the morning and that too, with the insistence of deceased vacating the premises, when the accused has responded in the aforesaid manner, in our opinion, cannot be said to be a case of murder. We therefore, accept the submission of Mr. S.A.Shah and hold that the accused could be held responsible for the offence under section 304(2) of the Indian Penal Code and that period that he has undergone, in our opinion, can be considered enough by way of punishment.

9. The net result therefore is, the appeal is partly allowed. The conviction is altered from the one under section 302 to one under section 304(2) of the Indian Penal Code. The period of sentence that he has undergone is considered enough. The accused is therefore, ordered to be set at liberty forthwith if not required in any other case. The learned Sessions Judge shall not insist upon the execution of a bond before releasing the accused. Rule is accordingly made absolute.

(N.J.Pandya,J)

(H.L.Gokhale,J)

